

A.G. Contract No.: KR98-2023TRN
ADOT ECS File No.: JPA 98-148
Project No.: RAM 600-1-551
Project: SR 101L
Section: Price T1 – Guadalupe Road
TRACS No.: H4866 01C
Budget Source Item No.: 82499

**INTERGOVERNMENTAL AGREEMENT
LANDSCAPE MAINTENANCE**

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF MESA

THIS AGREEMENT is entered into 19th October, 2004, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF MESA, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes § 48-572 and City Charter, Article I, Section 103, to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has installed a complete and functioning computer controlled irrigation system along with furnishing and planting trees and shrubs, beginning at milepost (MP) 54.06 and extending south to MP 56.06 and on US 60 beginning at MP 175.41 and extending east to MP 177.41, on State Route (SR) 101L rights of way, within the City of Mesa, herein after referred to as the "Project", at an estimated cost of \$3,015,000.00. The landscape and irrigation system was constructed to City of Mesa standards along SR 101L frontage roads within City maintenance limits, as shown on the attached Maintenance Exhibit, as approved by the City of Mesa and the State.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27/63
Filed with the Secretary of State
Date Filed: 10/19/04
Janice K. Brewer
Secretary of State

By: Tim D. Haenevald

II. SCOPE OF WORK

1. The State:

a. Designed and constructed the landscape and irrigation Project and submitted them to the City for concurrence.

b. Used color-coded irrigation pipe to indicate the presence of reclaimed water, as required by law, if the City elects to use effluent water at a later date. At this time, the City has elected to use potable water.

c. Is responsible for maintaining the landscaping, landform graphics and will pay for irrigation system and irrigation system electric, all generally within the Control of Access, as designated in the attached Maintenance Exhibit.

d. Furnished and installed necessary water services from water mains to the designated locations within the right-of-way at the State's expense.

2 The City:

a. Reviewed the design documents and provided comments to the State.

b. Provided potable water mains up to or within the State's right-of-way.

c. Authorized and paid or waived any water development fees.

d. Will furnish all potable or reclaimed water for landscape installation during the construction phase and all water, thereafter necessary to properly maintain the landscape, at City's expense. All planned work by the City within the State's Control of Access was requested through the State's Phoenix Maintenance District Permits Office.

e. Has the option to deliver treated reclaimed water instead of potable water.

f. Will maintain the irrigation system generally outside the Control of Access, at the conclusion of the contractor maintenance and warranty period as designated on the attached Maintenance Exhibit. Included all testing, adjusting, repairing and operation of the irrigation system. Assumes responsibility of paying for electric power necessary to operate the City's irrigation controllers and any booster pumps. Will be responsible for all the sidewalks within the Project limits according to the attached Maintenance Exhibit.

g. Will maintain the landscaping in areas designated on the attached Maintenance Exhibit. Landscape maintenance shall consist of the care of all landscaping in accordance with accepted horticultural practices. Will maintain all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping.

h. Will conduct all maintenance work in a manner to minimize traffic congestion and interference with through traffic. All traffic control shall meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual". The City will not make any changes, additions or deletions without written approval of the State.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this agreement shall remain in full force and effect for a period of five (5) years from the effective date, unless this agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless either party shall give notice in writing to the other not less than one (1) month nor more than three (3) months prior to the initial or renewed expiration date. Further, this agreement may be terminated by the State at any time upon sixty (60) days written notice. It is understood and agreed that, in the event the City terminates this agreement, the State shall in no way be obligated to maintain said landscaping.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

6. Non-Availability of Funds: Every payment obligation of the State and the City under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and/or the City at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State and/or the City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy, that may arise out of this agreement, the parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

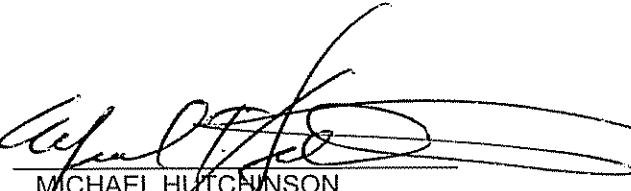
City of Mesa
City Manager
P.O. Box 1466
Mesa, AZ 85211-1466

9. Pursuant to Arizona Revised Statutes Section 11-952 (D), attached hereto, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

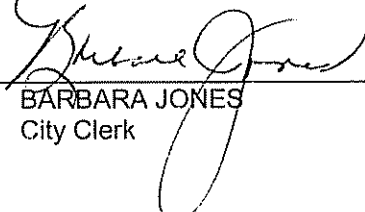
CITY OF MESA

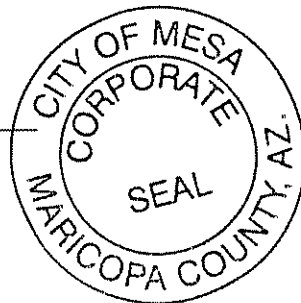
STATE OF ARIZONA
Department of Transportation

By 
MICHAEL HUTCHINSON
City Manager

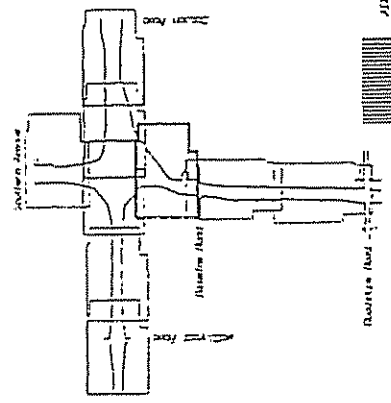
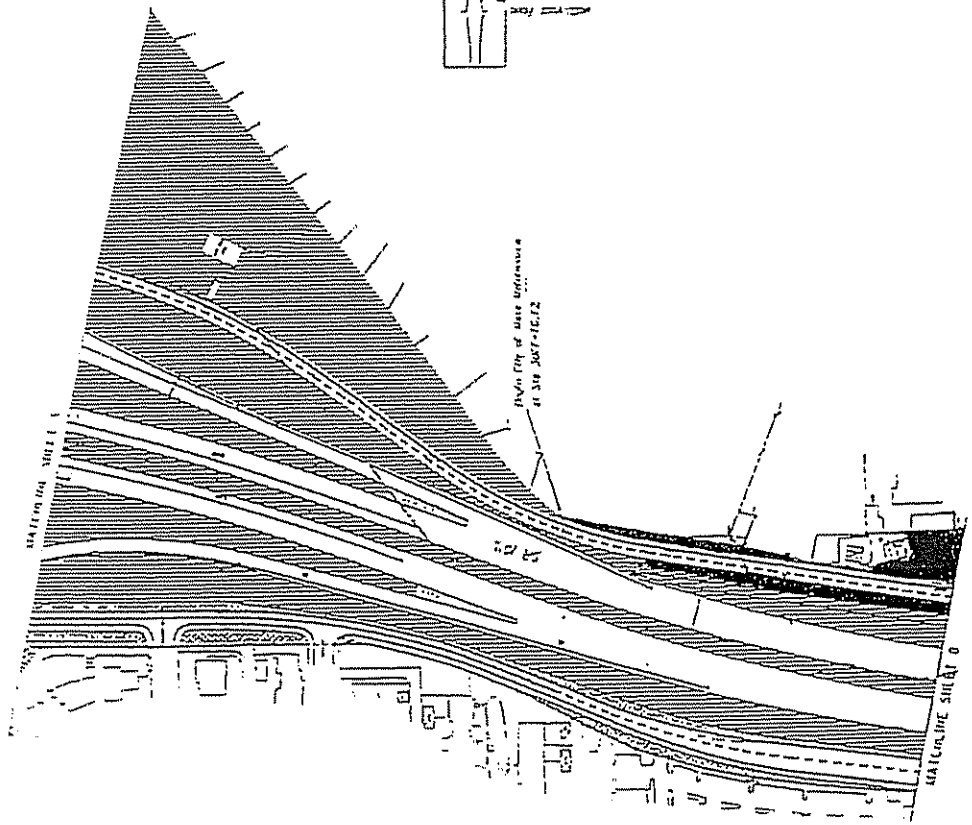
By 
DANIEL S. LANCE, P. E.
Deputy State Engineer

ATTEST

By 
BARBARA JONES
City Clerk



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TRACES NO. 11 4855 DIC

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MAXIMUM MILE 3

RESOLUTION NO. 8330

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE STATE OF ARIZONA DEPARTMENT OF TRANSPORTATION AND THE CITY OF MESA FOR THE LANDSCAPE MAINTENANCE ALONG THE PRICE FREEWAY FROM US 60 / PRICE TRAFFIC INTERCHANGE TO GUADALUPE ROAD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: That the agreement between the State of Arizona Department of Transportation and the City of Mesa for the Landscape Maintenance along the Price Freeway from US 60 / Price Traffic Interchange to Guadalupe Rd (ADOT JPA No. 98-148); is hereby approved.

Section 2: That the City Manager, Michael T. Hutchinson, or his designated representative, is authorized and directed to execute the agreement on behalf of the City of Mesa, and the City Clerk is authorized and directed to attest to the signature of the City Manager or his authorized designated representative thereon.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona, this 20th day of September, 2004.



APPROVED:

Keno Hawker
Mayor

ATTEST:

Brian Jones
City Clerk

APPROVAL OF THE CITY OF MESA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF MESA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 22 day of September, 2004.

Debbie Spinn

City Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR98-2023TRN (JPA 98-148), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: October 14, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis", written over a horizontal line.

Susan E. Davis
Assistant Attorney General
Transportation Section